



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/171329

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on April 13, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the IRIS program erred in its denial of the allowance of funds for the Community Life program at Bethesda College in the amount of \$3,563.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Bureau of Long-Term Support
The Management Group

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is enrolled in the IRIS Program.

3. Petitioner filed a one-time expense request with IRIS seeking funds in the amount of \$12,965 for educational program at Bethesda College at Concordia University.
4. On 12/28/15 the IRIS Program denied the request on the basis that college tuition is not an allowed service.
5. Petitioner appealed.
6. In an effort at compromise, the IRIS Program allowed funding for 2 of the Bethesda educational components.
7. Petitioner obtained funding from DVR for some of the funding.
8. At the time of hearing, petitioner's representatives clarified that the only issue for appeal is the funding for the "Community Life" portion of the requested educational program and the related funding of \$3,563.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

IRIS Program policy no. SC 16.1 provides guidance on coverage of customized goods or services under the program. Such goods or services are those that enhance the person's opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. The item must meet all four of the following criteria:

- a. It must be designed to meet the person's functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations;
- d. It cannot be available through another source or be experimental in nature.

In addition, the item must meet at least one of the following criteria:

- a. It will maintain or increase the person's safety in the home or community;
- b. It will decrease or prevent increased dependence on other Medicaid-funded services;
- c. It will maintain or increase the person's functioning related to his disability;
- d. It will maintain or increase the person's access to or presence in the community.

The agency must review questionable items that exceed the cost of average products necessary to meet an outcome. ***The agency must provide an item that is the most cost effective possible.*** See IRIS Program Operations Infrequent Expense Policy at www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf. See also 42 C.F.R. §440.180(b)(9).

In this case, the IRIS program did allow funding for the Daily Living Skills and Career Preparation components of the educational program because the IRIS program believed that these correlated to the

waiver services and goals. The IRIS program denied the funding for the Community Life component because the program believed that the component included recreational components and “soft skills” which are developed in the other educational components. The agency also noted that the IRIS program is one with a goal of long-term support for needy individuals. The program believes that the absence of the Community Life component from petitioner’s educational pursuits is not likely to cause petitioner to require institutionalization.

Petitioner’s representatives argued that this type of program has been granted before to petitioner and has been granted to others. But this does not establish that the allowance is correct now. Petitioner argued that “soft skills” can be covered, but this was not a rebuttal of the agency’s position which specifically noted that the soft skills are encompassed elsewhere in the allowed components of the Bethesda program – not that the soft skills cannot be covered.

As a waiver program, IRIS is free of some of the more restrictive regulations pertaining to regular medical assistance, but this does not mean that recipients are entitled to whatever potentially beneficial services the imagination can conjure. Recipients are not entitled to what would be akin to an allowance for any beneficial education. IRIS, like all government medical assistance, must provide basic services to a large number of persons at a reasonable cost.

In conclusion, the petitioner has not demonstrated by the greater weight of the credible evidence that this request is medically necessary or otherwise required by the IRIS Program. Therefore, I must uphold the program’s denial.

CONCLUSIONS OF LAW

The IRIS Program did not err in denying the Community Life component as it was not established as necessary or cost-effective.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

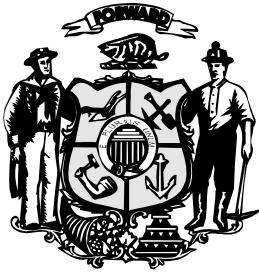
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of June, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 2, 2016.

Bureau of Long-Term Support